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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/693,791

10/24/2003

Alex Martynovych

5422-102US

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26817

7590

03/05/2009

MATHEWS, SHEPHERD, MCKAY, & BRUNEAU, P.A.
29 THANET ROAD, SUITE 201
PRINCETON, NJ 08540

EXAMINER

REDDING, DAVID A

ART UNIT

PAPER NUMBER

3723

MAIL DATE

DELIVERY MODE

03/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/693,791	Applicant(s) MARTYNOVYCH, ALEX	
	Examiner /David A. Redding/	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-8,10,11 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-8,10,11,14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1,2,5-8,10,11,14, are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 4,651,380(Ogden).

Ogden discloses a portable wet/dry vacuum for cleaning floors (hard or carpeted) comprising a central tank and vacuum assembly, 41, a wand 16, a hose assembly 17, and a vacuum assembly comprising a first blower 95 and second blower 96, the blowers capable of operating in parallel or series. The system includes wheels 36, a lower tank 46 for waste water recovery and an upper tank 55 having vacuum inlet 49. The waste water is vacuumed from the wand 16 through hose 17 to inlet 45 into tank 46 where a separator 48 separates the air from the waste water.

The system includes a lowest clean water storage tank 70 having a clean water inlet 66, a low pressure pump 76 or high pressure pump 77 for delivering the clean water to the wand 16 and a waste water pump 89 for pumping the collected waste water out of outlet valve 92. To create the vacuum the cleaner includes two vacuum blowers 95/96 which can be connected in series or operate in parallel (col.20-64).

The system in Ogden differs from the claims in that two vacuum pumps are used as opposed to the claimed three.

In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (Claims at issue were directed to a water-tight masonry structure wherein a water seal of flexible material fills the joints which form between adjacent pours of concrete.

The claimed water seal has a "web" which lies in the joint, and a plurality of "ribs" ** >projecting outwardly from each side of the web into one of the adjacent concrete slabs. flexible water stop for preventing passage of water between masses of concrete in the shape of a plus sign (+). Although the reference did not disclose a plurality of ribs, the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.). In the absence of unexpected results, the addition of a third blower to the two blowers in the system of Ogden is considered to be obvious.

The declaration under 37 CFR 1.132 filed 11/7/08 is insufficient to overcome the rejection of claims 1,2, 5-8,10,11, and 14 based upon USP 4,651,380 (Ogden) as set forth in the last Office action because: addition of a third blower in series with two parallel blowers provides results **which are not unexpected**.

Both applicant and applicant's representative assert it is unexpected that connecting two blowers in parallel and a third blower in series both increase air flow through the assembly and increase water lift. However, comparing the results in table two to the results of the blowers in parallel in table one, only the water lift is increased, 170 Hg as compared to 125 Hg. The air flow produced by applicant's cleaner appears to be the same when compared to the results in Ogden for the parallel configuration, 180 cfm. Applicant's device does increase the water lift, however, applicant has not provided a reasonable explanation based on engineering principles as to why the increase in water lift is an unexpected result. The Examiner offers that the increased water lift would be expected if you add a third blower to the Ogden device.

Applicant further offers that the claimed invention is capable of cleaning a far greater area of carpet, 800ft as compared to 50ft, than the device of Ogden. However, it is unclear if such results are due to the added third blower or other elements of applicant's device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /David A. Redding/ whose telephone number is 571-272-1276. The examiner can normally be reached on Mon.-Fri. 6:00 - 3:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David A Redding/
Primary Examiner
Art Unit 3723

DAR